IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3809 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPKUMAR MAGANLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SATYEN B RAWAL for Petitioner

MR VM PANCHOLI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/2000

ORAL JUDGEMENT

#. In this petition notice was issued to the respondents on 8th July 1997. Reply to the same has not been filed by respondents. On 28th August, 1997, this petition was admitted but thereafter also, the respondents have not

cared to file reply to the special civil application. On 22.2.99, this court has ordered for listing this matter on final hearing Board on 19th April 1999. The court has also said that in the meanwhile, if the respondents so desire, they may file reply to the special civil application but reply has not been filed. On 16th March 2000, as the reply has not been filed the respondents were directed to file the same. On 4.4.2000, on the request of learned counsel for respondents, one more opportunity has been given to the respondents to file reply to the special civil application but it has not been filed. So this conduct of respondents goes to show that they have no case whatsoever in their favour, otherwise, reply could have been filed. Secondly, for want of reply to the special civil application from the respondents, whatever averments made by petitioner in the special civil application stand uncontroverted and the same are to be taken to have been admitted.

#. The facts of the case are that the petitioner, vide registered sale deed dated 16.4.94, purchased agricultural land situated in the Sim of Wadhwan, District: Surendranagar for a consideration of Rs.60,000/=. On the very date, this document was presented in the office of the Sub Registrar of Surendranagar as per the advise of the advocate for registration. On 3.12.94, this document was returned by the Sub Registrar, Surendranagar, to the advocate for the petitioner for presentation of the same before the competent officer. This document was presented before the Sub Registrar of Wadhwan on 3.12.94 and the petitioner also deposited Rs.9,830/= being the amount of fine, ten times of the registration fees payable on the document for condonation of delay. This power of condonation of delay lies with the District Registrar, Surendranagar and accordingly this matter was sent to the said officer by the Sub Registrar, Wadhwan. The District Registrar, Surendranagar, under its order dated 10.4.95 declined to condone delay made in presentation of document before the Sub Registrar, Wadhwan, by the petitioner, and the application filed by petitioner for condonation of delay was rejected. The petitioner filed review application but that was also dismissed on 1.5.95. On 1.7.95, the consequential order of refusing the application for condonation of delay which is there in presentation of document was passed by the Sub Registrar of Wadhwan. On 20.7.95, the petitioner filed an application before the District Registrar, Surendranagar and prayed therein for refund of Rs.9,830/=. This application was forwarded by the District Registrar, Surendranagar, to the Inspector General of Registration

at Ahmedabad. The petitioner received communication dated 17.1.97 from the office of the Sub Registrar, Surendranagar, whereby he was informed that his application dated 20th July 1995 is not accepted by the Inspector General of Registration, Ahmedabad. Hence this special civil application.

#. The petitioner, in paragraph-15 of the special civil application stated that because of refusal by the authority to condone the delay, he was constrained to get the fresh sale deed executed with respect to the same subject matter on 7.8.95. This sale deed was got registered by petitioner.

#. The learned counsel for the petitioner submitted that the petitioner incurred heavy expenses for this registration of sale deed. Mr.Rawal, learned counsel for the petitioner contended that the respondents have not considered the provisions as contained in Section 25 of the Indian Registration Act and Rule 27 of the Gujarat Registration Rules, 1970. Once delay in presentation of document is not condoned, u/s.25 of the Indian Registration Act, the petitioner is entitled for refund of amount of fine deposited by him. Once the application for condonation of delay is rejected, consequential order should have been passed by the authorities to refund the amount of penalty deposited to the petitioner and retention of this amount by respondents is not only illegal, arbitrary and unjustified, but in fact, contrary to the provisions of the Act and Rules framed thereunder.

#. The learned counsel for the respondents has supported the order passed by the respondents-authorities.

#. Mr.Pancholi, learned counsel for the respondents, is unable to show any justification whatsoever, legal or factual for retention of this amount of the petitioner. Section 23 of the Indian Registration Act (hereinafter referred to as "the Act") provides for time for presenting the documents. No document other than a Will is acceptable for registration unless presented for that purpose to the appropriate officer within four months from the date of its execution. Section 25 of the Act makes a provision empowering the authority concerned to condone the delay in the appropriate case made in presentation of it for registration. This provision empowers the authority mentioned therein in case where delay in presentation does not exceed four months for condonation thereof on payment of fine not exceeding ten times, the amount of proper registration fees. This document was executed on 16.4.94 and on the same day, it

was presented for registration in the office of Sub Registrar, Surendranagar, but that authority was not competent to register this document as the land is situated in village Wadhwan. This document has been returned back to the petitioner on 3.12.94 and on the same date, it was presented before the Sub Registrar of Wadhwan. If we go from the date 16.4.94, it is a case where the petitioner presented this document for registration in the office of Sub Registrar, Wadhwan, by delay of less than four months. In fact, there is no delay in presentation of document. This delay occurred only as the authority to which it was presented held that it has no jurisdiction to register this document and the same has been returned to the petitioner for presentation thereof in the office of Sub Registrar, Wadhwan. The learned counsel for the respondents has failed to show any provisions whereby on presentation of document to the authority which is not competent to register the document though it was presented within limitation on return of the document for presentation before the competent authority, this question of delay could not have been considered. Such document in absence of special provision in the Act or Rules could not have been taken to be not presented within prescribed time. A bonafide mistake committed by the litigant cannot be taken to be a wrong where penalty has to be imposed. However, I do not consider it to be necessary in this case to decide on this question finally because it is also not the case of petitioner that this document could have been registered without payment of penalty and condonation of delay in presentation thereof. Ordinarily, delay should have been condoned but the authority may have discretion in appropriate case not to condone delay in presentation of documents beyond limitation prescribed for presentation thereof. But where this delay is not condoned, I fail to see any justification in the action of respondents not to refund the amount which has been deposited by petitioner as penalty. This amount is chargeable from the petitioner as penalty for registration of document which is not presented within the time prescribed u/s.23 of the Act. So refund could not have been permissible only where the delay is condoned and the document is registered. But where delay is not condoned, this amount could not have been retained because it is the amount of penalty for registration of document presented beyond prescribed time limit u/s.23 of the Act for presentation thereof. Sine-qua-non for retention of this amount is to condone the delay and register the document and not otherwise. This position is made clear under Rule 27 of the Gujarat Registration Rules, 1970. Proviso 2 thereto provides that when any such application, i.e.

application for condonation, is not accepted or is accepted and the amount of fine is less than the full amount paid to the Registrar or the additional amount, as the case may be, shall be refunded to the party who has paid it. On rejection of application u/s.25 for condonation of delay, this amount automatically becomes refundable to the petitioner. Even for this, application was not necessary. The respondents themselves should have refunded this amount to the petitioner. This case does not fall under section 34 of the Act. The action of the respondents not to refund this amount to the petitioner is wholly arbitrary and unjustified and contrary to the provisions of Rules 1970 and it cannot be allowed to stand.

#. As a result of aforesaid discussion, this writ petition succeeds and the same is allowed and the order of the Inspector General of Registration, Ahmedabad, as communicated to the petitioner under the communication of the Sub Registrar, Surendranagar, dated 17.1.97 is quashed and set aside and it is hereby declared that the petitioner is entitled for Rs.9,830/=. The respondents, the Sub Registrar of Documents, Wadhwan, District Surendranagar, is directed to forthwith refund this amount to the petitioner. This amount of the petitioner has been illegally retained by the respondents. He has been deprived of this amount. The respondents are further directed to pay interest thereon at the rate of 12% p.a. from the date of deposit till the date of refund thereof. It is a fit case where the petitioner should be awarded costs of this petition also. The respondents are directed to pay Rs.2,000/= as costs of this petition to the petitioner. Rule is made absolute.

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(sunil)